the appointment of an Interim Receiver did not exist, and in fact had never existed.

For these reasons, I think that the Interim Receiver should then and there, have been discharged.

For the reasons given above, I also think that, even if one could accede to the argument for the Plaintiff before us that the point considered by Murray-Aynsley, J. was the appointment of a substantive Receiver, then there were insufficient grounds or material before the learned Judge for such substantive appointment being made.

Not only had the Plaintiff made allegations against the 1st and 2nd Defendants which had not been replied to, but some of those allegations were not relevant to the partnership issue. Moreover, the Plaintiff is only one of several partners and all the other partners object to the appointment of a Receiver, Interim or otherwise.

In my opinion, however, the question of substantive appointment of a Receiver is not properly before the Court and cannot be acceded to and the order continuing the appointment of the Interim Receiver should be discharged as also the order of Terrell J. making such appointment. This, however, should be without prejudice to the right of the Plaintiff to make any further application in this respect as she may think fit.

In allowing this appeal, there should be an order to such effect and the orders of Terrell J. of the 1st May and that of Murray-Aynsley, J. of the 13th June, should be discharged. The Interim Receiver should be ordered to account for the period of his Receivership and there should be an Inquiry as to the damages suffered in consequence of such appointment, the amount to be paid to the Defendants in accordance with the undertaking by the Plaintiff contained in the order of Terrell J. The Plaintiff will also have to pay the costs of the proceedings before Terrell J. and Murray-Aynsley, J., and as regards this appeal the plaintiff will also have to pay the Appellants' costs and there will be a certificate for two Counsel. The 2nd Respondent supported the appeal; there will be no order for costs against her.

Poyser, C.J.—I concur.

McElwaine, C.J. (S.S.)—I concur.

Appeal allowed.

[APPELLATE CRIMINAL JURISDICTION]

POYSER, C.J., McELWAINE, C.J. (S.S.) &

GORDON-SMITH, Ag. J.A.

August 25, 1939.

ABDUL MORMIN v. PUBLIC PROSECUTOR.

[PERAK CRIMINAL APPEAL No. 12 of 1939]

Criminal Procedure Code (Cap. 6) Section 173—Plea of guilty—Magistrate's discretion as to permitting withdrawal of plea.

Until the Court is functus officio, it can in a proper case reject a plea of guilty which it may have accepted. It is in the discretion of the Court whether or not to allow such a plea to be withdrawn. That discretion must be exercised judicially.

This was a rehearing before the Court of Appeal under section 45A of the Courts Enactment (Cap. 2) of an appeal against the decision of a magistrate. The facts sufficiently appear from the judgment.

K. M. Coomarasamy for the Appellant.

T. V. A. Brodie, Deputy Public Prosecutor for the Respondent.

The Judgment of the Court was as follows:—

The Legal Adviser gave his certificate that this is a fit case for appeal from the Judgment of Mr. Justice Musa dismissing the appellant's appeal from his conviction and sentence on his plea of guilty to a charge of voluntarily causing grievous hurt tried before Mr. P. F. Y. Radcliffe, Magistrate at Ipoh.

On the 27th May, 1939, the charge was read and explained to the accused both in Hindustani and in Malay and in both languages he pleaded guilty. In Hindustani he said "I hit my wife with a stick."

The Magistrate postponed sentence to the 30th May to enable the wife to be present in the hope that some expression of regret might be made.

On the 30th Mr. Coomarasamy appeared for the accused and asked to withdraw the plea of guilty, the accused stating "she got her injuries by falling down".

This latter statement was at variance with that previous statement "I hit her with a stick" and his plea of guilty, and the Magistrate refused to allow the plea of guilty to be withdrawn and he sentenced the appellant to three months' R.I.

This appeal is against the Magistrate's refusal to allow the plea of guilty to be withdrawn.

At the conclusion of the argument we dismissed the appeal and we now give our reasons for so doing.

It is in the discretion of the Magistrate whether he will allow a plea of guilty to be withdrawn. That discretion must be used judicially and it is undesirable to attempt to lay down any hard and fast rule as to how the discretion should be exercised.

Mr. Brodie for the Public Prosecutor referred us to the Criminal Procedure Code, section 173 (a) (b) (m). The latter paragraph enacts that "If the Court finds the accused guilty or if a plea of guilty has been recorded and accepted, the Court shall pass sentence according to law".

This clause speaks of two distinct things, recording a plea and accepting a plea and we are of opinion that until the Court has become *functus officio* it can in a proper case reject a plea which it may have accepted.

It may happen that notwithstanding meticulous compliance with paragraphs (a) and (b) of section 173 the Court becomes aware of some defence and considers that a plea of not guilty could be entered. *R. v. Baker* 7 Cr. App. R., 217, *R. v. Ingleson* 11 Cr. App. R. 21, *R. v. Golathan* 11 Cr. App. R., 79.

In *R. v. Rhodes* 11 Cr. App. R., 33 Lawrence J. said "the court must be satisfied that there really has been a mistake" on the part of the accused in pleading guilty. We see no reason why the Court of trial as well as the Court of Appeal should not correct a mistake before the Court becomes *functus officio—Goh Ah San v. The King* 7 M.L.J., 95 at 99, *R. v. Plummer* (1902) 2 K.B., 339.

It may be, too, that a plea in mitigation raises complicated questions of fact on which it is necessary to take evidence. In such a case the Court may find it more convenient to try the case as a whole and we see no reason why a plea of not guilty should not be substituted for the plea of guilty. This is the procedure in Courts Martial and it is only fair to an accused person that he should have an opportunity of having the truth of allegations in his favour properly investigated, and it is only fair to the Crown that it should have an opportunity of meeting those allegations, and it is right that the Court should ascertain the truth or otherwise of the allegations in the manner most convenient to it.

In the present case we see no evidence of mistake. The accused when charged with causing grievous hurt to his wife pleaded guilty. He also said "I hit my wife with a stick". Later when counsel was engaged by his relatives he wished to withdraw what he had said and to allege that his wife got her injuries by falling down.

There is nothing on the appellant's affidavit to indicate that there was any matter for further enquiry either by the Magistrate or by an appellate Court.

The police informed the Magistrate that the accused had received some slight provocation. There is nothing in the record or in the appellant's affidavit to indicate that the appellant desired to or could set up grave and sudden provocation so as to bring the case under section 335 of the Penal Code.

Having admitted that he caused the hurt he desired three days later to deny having caused the hurt.

Under these circumstances the Magistrate was right in refusing to allow the plea of guilty to be withdrawn.

The appeal is dismissed.

Appeal dismissed.

[APPELLATE CIVIL JURISDICTION]

POYSER, C.J. (F.M.S.), McELWAINE, C.J. (S.S.) AND GORDON-SMITH, Ag. J.A.

August 29, 1939.

SANTA SINGH s/o LEHNA SINGH

v.

SANTA SINGAH s/o MEYA SINGH.

[PERAK CIVIL APPEAL No. 2 of 1939]

Bills of Sale Enactment (Cap. 57)— Section 5— Bill of sale of buffaloes by way of security—offspring of such buffaloes are not included in the property transferred to the grantee.

The offspring of buffaloes or other cattle assigned in a bill of sale which are born after its execution forms no part of the security comprised in favour of the assignee.

Appeal from judgment of Murray-Aynsley J. (on appeal from a Magistrate's Court) reported in (1939) 8 Malayan Law Journal at page 27.

J. A. Thivy for Appellant.

Farr for Respondent.

Poyser, C.J. (F.M.S.)—The respondent brought an action in the Magistrate's Court for:—

1. A declaration that the plaintiff is the holder of the bill of sale over attached two young she-buffaloes and two young he-buffaloes and that the said cattle are not liable to attachment at the instance of Defendant No. 1.
2. Damages for wrongful attachment.
3. Costs of suit.